

**CAROL HOWELL'S MEMORANDUM IN SUPPORT OF APPEAL
AND MOTION/REQUEST FOR INJUNCTION ON ANY FURTHER CONSTRUCTION
ON THE REAR EXTENSION/ADDITION AT 316 2ND STREET, SE, WASHINGTON, D.C.**

ISSUE NUMBER 1.

Did Matthew Le Grant, Zoning Administrator err in granting the requested minor flexibility in his August 9, 2021 Memorandum:

Yes, Mr. Le Grant erred. The Zoning Administrator is allowed only 2% authority/discretion in granting minor flexibility for extensions/additions in regards to 60% maximum limit as per Section E-504.1 and 11 DCMR Section a-304 et. seq., with respect to area requirements. The supporting evidence, exhibits, and testimony of Robert Eitel, Engineer regarding measurements clearly shows that the requested minor flexibility, exceeded Mr. Le Grant's authority (given the Zoning Administrator) under the DCMR Zoning Regulations. Therefore, Mr. Le Grant had no authority to grant the request, which was relied on for the issuance of the now expired building permit for 316 2nd Street, SE, B2011821. (*See*, Summary of Robert Eitel Testimony in Ms. Howell's Continuation Sheet to Form 125, and Exhibits Relied on by Mr. Eitel, including D.C. Surveyor's Certified Plat) (*See also*, 11-B DCMR 312, 11 DCMR Section A-304.3 et. seq.,)

ISSUE NUMBER 2.

Did Matthew Le Grant, Zoning Administrator err in finding that the requested "minor increase of lot occupancy of the one foot extension is minimal" when the actual increase was calculated incorrectly, is greater than the requested increase, and exceeds the Zoning Administrators 2% "minor flexibility" authority? (11 DCMR Section A-304.3 et. seq., and 11-B DCMR Section 312, *supra*)

Yes, Mr. Le Grant erred. His granting of the request exceeded his authority. The reader is referred to argument set forth in Issue Number 1 above, the Summary of Robert Eitel's testimony, (**Exhibit 7**), and the other Exhibits filed herein on which Mr. Eitel will rely.

ISSUE NUMBER 3.

Did Mr. Le Grant err when he found that the light and air available to 314 2nd Street, SE, would not be unduly compromised by the proposed extension to the rear of 316 2nd Street, SE, Washington, D.C.?

Yes. Not only did Mr. Le Grant exceed his authority in granting the request, (which makes his other findings moot) he failed to site check the property, and failed to apply the purpose and intent of 11 DCMR Section A-304 et. seq., when he granted the request without Ms. Howell's knowledge, consent, or input. Since Ms. Howell is the owner of 314 2nd Street, SE, Washington, D.C., the abutting property, and the clear language of 11 DCMR Section A-304 et. seq. is to protect the light, air, use and enjoyment of abutting property owners, she had a statutory and legal right to be heard, and have input before Mr. Le Grant granted the request. She was not. She was once again denied this right as a Party Opponent in BZA Case Number 20543 when she was denied the chance to testify and present witnesses and evidence about her loss of light, air, privacy, and use and enjoyment of her property after Mr. Le Grant erred in granting the request for minor flexibility. She was further denied her rights, when the BZA in the April 20, 2022 hearing denied Ms. Howell's request for continuance, and request for the plans and documents submitted to Matthew Le Grant, Zoning Administrator, by Richard Holowchak, Cargill

contractor, upon which Matthew Le Grant relied in granting the requested minor flexibility in his August 9, 2021 Email.

ISSUE NUMBER 4.

Did Mr. Le Grant err when he found that “the proposed extension will not have windows facing adjacent properties on the sides so it is unlikely to affect privacy”?

Yes. Not only did Mr. Le Grant exceed his authority in granting the request, he failed to consider the windows on the South and rear of Ms. Howell’s property, and the sight line from the proposed pergola, deck, and rear stairs, which will allow occupants/guest of 316 2nd Street, SE, to see into the windows on the rear and south side dogleg of Ms. Howell’s abutting home, as well as her courtyard.

ISSUE NUMBER 5.

Under the “unduly compromise” standard, did Mr. Le Grant err in finding the “slight increase in lot occupancy is unlikely to have any effect” on Ms. Howell’s use and enjoyment of her abutting property, 314 2nd Street, S.E.?

Yes. Not only did Mr. Le Grant exceed his authority when he granted the request, he failed to do a site check of the property, relied on inaccurate measurements, and did not consider abutting neighbor’s (Ms. Howell’s) concerns regarding what effect the proposed extension would have on her use and enjoyment of her property. 11 DCMR Section A-304, et. seq. is specifically intended to protect abutting property owners, like Ms. Howell, use and enjoyment of their property. The intent and purpose of this Zoning Regulation cannot be carried out without the input of abutting property owners, whose rights it is expressly intended to protect.

ISSUE NUMBER 6.

Did Mr. Le Grant err in granting the request for minor flexibility without seeking the input of abutting property owner?

Yes. Not only did Mr. Le Grant exceed his authority when he granted the request, he failed to consider the concerns of Ms. Howell, an abutting property owner. The clear purpose and intent of 11 DCMR Section A-304, et. seq. is to protect abutting property owners use and enjoyment of their property... and to not unduly affect their air, light, privacy, use and enjoyment. Without Ms. Howell’s input, the purpose and intent of this zoning regulation cannot, and was not carried out. Her rights were not considered because her concerns were not heard. Ms. Howell had the right to full transparency. She should have been shown a copy of the plans for the proposed extension. She was not, prior to the issuance of the building permit. (*See*, Dineshkumar Patel’s email to the owner’s of 316, advising them of their legal obligations to provide abutting property owners (i.e., Ms. Howell) a copy of their plans.) Ms. Howell should have been made aware of Richard Holowchak’s (contractor of the Cargill’s) request made to Mr. Le Grant, and she should have been notified with a copy of the email, and the attached documents/plans. She was not. As of this writing, Ms. Howell, has still not received a copy of the Richard Holowchak email, with attached documents and plans, although the documents were requested via email, phone, and filing in BZA Case No. 20534. The Zoning Administrator has failed to respond. The attorney for the Cargill’s has not provided the documents, nor has his client’s the Cargills.

ISSUE NUMBER 7.

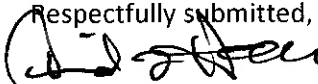
Was DCRA's reliance on Mr. Le Grant's August 9, 2021 Email in issuing building permit number B2011821 in err; and should the now expired building permit be vacated *Nunc Pro Tunc*?

Yes. DCRA's reliance on Mr. Le Grant's decision to grant the request for minor flexibility was granted in error. It was beyond the authority given the Zoning Administrator to grant the request as stated in this memorandum and **Exhibit 7**, Summary of Testimony of Richard Eitel. Since Mr. Le Grant erred in granting the request because he lacked the authority to grant the request, reliance of the DCRA in issuing a building permit for the extension to the rear of 316 2nd Street, SE, was done in err, and should be vacated and rescinded *Nunc Pro Tunc*.

SUMMATION/REQUEST FOR INJUNCTION AGAINST FURTHER WORK ON EXTENSION/ADDITION AT 316 2ND STREET, SE, WASHINGTON, D.C.

In summation, Mr. Le Grant exceeded his 2% authority when he granted the request for minor flexibility. Mr. Le Grant also failed to carry out the purpose and intent of zoning regulations and laws when he granted the request for minor flexibility under 11 DCMR Section A-304 et. seq. without effecting its purpose and intent, which is to protect light, air, use, and enjoyment of abutting property owner's, such as Ms. Howell. The building permit issued in this matter, was issued wrongfully, because Mr. Le Grant erred in granting Richard Holowchak's request for minor flexibility **and** because the Cargills failed to provide Ms. Howell, an abutting property owner, their architectural plans for her review and consideration as to how the extension would affect her light, air, privacy, and use and enjoyment of her property. The BZA should reverse the Zoning Administrators ruling in his email dated August 9, 2021. The BZA should issue an Order rescinding and vacating *Nun Pro Tunc*, the building permit issued (and now expired) for the extension to the rear of 316 2nd Street, SE, Washington, D.C. (Building permit No. B2011821).

Ms. Howell respectfully requests that the BZA issue an injunction against the renewal of the currently expired building permit in this matter, so that her rights as an abutting property owner can be protected.

Respectfully submitted,


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